

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARK A. SMITH,

Plaintiff,

v.

GLENN S. GOORD,
WAYNE J. WILHELM, and
THOMAS G. EAGEN,

Defendants.

**DECISION
and
ORDER**

**03-CV-067F
(consent)**

On July 21, 2003, the parties to this action consented to proceed before the undersigned. On January 27, 2003, Plaintiff, Mark A. Smith ("Plaintiff"), commenced this civil rights action, *pro se*, while incarcerated at Southport Correctional Facility in Pine City, New York. On June 28, 2006, Defendants filed a motion for summary judgment (Doc. No. 41). On June 28, 2006, the court sent to Plaintiff in a separate mailing a copy of an IRBY Notice advising Plaintiff that his failure to respond to Defendants' summary judgment motion could result in summary judgment being granted in favor of Defendants and the dismissal of the action. The IRBY Notice was not returned to the court as undeliverable. On February 12, 2007, Plaintiff advised the court of his new address at 245 Whalley Avenue, New Haven, Connecticut, 06511.

By Order filed January 23, 2008 (Doc. No. 50), the court directed Plaintiff to file his response in opposition to summary judgment by February 8, 2008, and Defendants to file any reply by February 15, 2008. Such order was served on Plaintiff at his new address in Connecticut. On January 30, 2008, the Order was returned as undeliverable, bearing the notation "Discharged 3-14-07."

Rule 5.3(d) of the Local Rules of Civil Procedure for the Western District of New York permits the court to dismiss an action with prejudice when the plaintiff fails to keep the court informed as to his correct address. In this case, the record establishes that despite having been “discharged” on March 14, 2007, presumably from a facility located at the 245 Whalley Avenue address in New Haven, Connecticut, Plaintiff had failed to advise the court of his new address. The court is thus constrained to find that Plaintiff has abandoned his case.

Because Plaintiff’s failure to inform the court of his new address renders him in violation of Local Rule 5.3(d), his case is DISMISSED with prejudice. Defendants’ pending motion for summary judgment (Doc. No. 41) is DISMISSED as moot. The Clerk of the Court is directed to close the case.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

DATED: February 21, 2008
Buffalo, New York

Any appeal of this Decision and Order must be taken to by filing a notice of appeal within 30 days of the filing of this Decision and Order pursuant to Fed. R. App. P. 4(a)(1) & (c).